



REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NAKURU

(Coram: Madan and Potter JJA & Chesoni Ag JA)

CRIMINAL APPEAL NO 30 OF 1982 & 16 OF 1983 (CONSOLIDATED)

BETWEEN

IKOKIA OLE NKURRUNA APPELLANT

AND

REPUBLIC RESPONDENT

**(Appeal from a judgment of the High Court of Kenya at Nkuru (Mead J) dtd 2nd November, 1981
in**

Criminal Appeals Nos 482 and 483 of 1981

JUDGMENT OF THE COURT

MADAN JA

Criminal Appeals Nos 30 of 1982 and 16 of 1983 have been consolidated, the appellant being the name individual in both cases. The offence in each case was also the same, i.e. stealing stock, contrary to section 278 of the Penal Code (cap 63). Appeal No 30 of 1982

On the night of 15th-16th May, 1981 six head of cattle were stolen, the property of Mr David C Begg.

On 17th May, the appellant together with a co-accused named Tom ole Nkuura was in possession of six stolen cattle. They sold two heads to a butcher, and a third to a private citizen. They were both convicted as charged and each sentenced to seven years imprisonment with ten strokes. The appellant's appeal to the High Court was summarily rejected under section 35(2) of the Criminal procedure Code (cap 75), as it was bound to be. We can see no merit in this second appeal before us. It is ordered to be dismissed. Appeal No 16 of 1983 On the night of 17th-18th June, 1981 four head of cattle were stolen from Mr Chege.

At 11.00 a.m. on 18th June the appellant and his co-accused named Saruana ole Tuyote tried to sell the stolen cattle to a butcher. As they were discussing the sale members of the Stock Theft Unit arrived. The two accused ran. The appellant was caught. He was convicted as charged, and sentenced to seven years imprisonment and 12 strokes, the prison term to run consecutively with the prison term in Criminal Case No 1214 of 1981. This was an inadvertent slip, and the magistrate no doubt meant to say Criminal Case No 984 of 1981 which is the subject matter of Criminal Appeal No 30 of 1982 before us. In that case the

appellant was originally charged separately in Criminal Case No 1214 of 1981 which was later consolidated with Criminal Case No 984 of 1981. The appellant's appeal to the High Court was summarily rejected, again as it was bound to be. We also do not see any merit in the appeal against conviction before us and order it to be dismissed.

The appellant's complaint is that the sentence is manifestly harsh and excessive. The magistrate was aware that the appellant was serving a sentence of seven years imprisonment for the same offence in Criminal Case No 984 of 1981. The offence in this case was committed subsequently to the offence in Criminal Case No 984 of 1981. The cattle in both cases were recovered except for one head which was slaughtered and the money in respect of it was produced in court. In the circumstances the sentence should not have been escalated, it should have been ordered to run concurrently with the sentence in Criminal Case No 984 of 1982, Mombasa Criminal Appeal No 84 of 1982 Robert John Mwachuwa v Republic). We so order. The sentence of the strokes will stand.

Save for the variation stated above the appeal is dismissed. Order accordingly.

Delivered at Nakuru this 21st day of March, 1983.

C B MADAN

JUDGE OF APPEAL

K D POTTER

JUDGE OF APPEAL

Z R CHESONI

AG JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR